

## REMARKS/ARGUMENTS

Amendments were made to the specification to provide the serial number of the related application referred to therein. No new matter has been added by any of the amendments to the specification.

Claims 1-20 are pending in the present application. No claims have been amended, added or canceled. Applicants have carefully considered the cited art and the Examiner's comments and believe the claims patentably distinguish over the cited art and are allowable in their present form. Reconsideration of the rejection is, accordingly, respectfully requested in view of the following comments.

### **I. 35 U.S.C. § 101**

The Examiner has rejected claim 20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is respectfully traversed.

The Examiner states:

Claim 20 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The computer readable media, as defined in the specification on page 14, lines 7 - 11 includes transmission type media, such as radio frequency and light wave transmissions. These are not tangibly embodied in a computer-readable medium, and hence non-statutory. There is always some form of physical transformation within a computer because a computer acts on signals and transforms them during its operation and changes the state of its components during the execution of a process. Even though such a physical transformation occurs within a computer, such activity is not determinative of whether the process is statutory because such transformation alone does not distinguish a statutory computer process from a nonstatutory computer process. What is determinative is not how the computer performs the process, but what the computer does to achieve a practical application. See *Arrhythmia*, 958 F.2d at 1057, 22 USPQ2d at 1036.

Office Action, dated September 20, 2006, pages 2-3.

No basis is present for holding a computer readable medium claim non-statutory because the medium may include transmission type media, such as radio frequency and light wave transmissions. The MPEP states:

In this context, "functional descriptive material" consists of **data structures** and computer programs **which impart functionality when employed as a computer component**. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

**When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the**

**medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.** Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). (**emphasis added**)

MPEP 2106 (IV)(B)(1).

Claim 20 recites clearly functional descriptive material since it imparts functionality when employed as a computer component. Moreover, the functional descriptive material of claim 20 is recorded on “some” computer readable medium.

In the above context, the term “some” means “any” computer readable medium. The MPEP does not draw any distinctions between one type of media that is considered to be statutory and another type of media that is considered to be non-statutory. To the contrary, the MPEP clearly states that as long as the functional descriptive material is in “some” computer-readable medium, it should be considered statutory. The only exception to this statement in the MPEP is functional descriptive material that does not generate a useful, concrete and tangible result, e.g., functional descriptive material composed completely of pure mathematical concepts that provide no practical result. Claim 20 clearly recites a useful, concrete and tangible result in that configuration settings having a second format are conveyed from a primary node to each secondary node of a plurality of secondary nodes, and each secondary node reconfigures in accordance with the plurality of configuration settings having the second format. This is not just some disembodied mathematical concept or abstract idea.

Thus, claim 20 is directed to functional descriptive material that provides a useful, concrete and tangible result, and which is embodied on “some” computer-readable medium. Therefore, claim 20 is statutory and the rejection of claim 20 under 35 U.S.C. § 101 has been overcome.

## **II. 35 U.S.C. § 103, Obviousness (claims 1, 4, 7, 9, 12, 15 and 18-20)**

The Examiner has rejected claims 1, 4, 7, 9, 12, 15 and 18-20 under 35 U.S.C. § 103(a) as being unpatentable over Cool et al., U.S. Patent Publication No. 2004/0010786 (hereinafter “Cool”) in view of White, U.S. Patent Publication No. 2003/0014447. This rejection is respectfully traversed.

In rejecting the claims, the Examiner states:

Regarding claim 1, Cool discloses an apparatus for maintaining compatibility between nodes within a distributed systems management environment, comprising:  
a primary node [server], said primary node including a primary storage area, said primary storage [local storage] area including at least two primary storage sections (See page 2, paragraph [0016] “The server 102 is a computing system that is configured to make resources available to other computing systems connected to the network... The

server includes local storage in the form of a server data store 110... In particular, the data store 110 includes a server application store 115 for storing application code, and a Web service 112 for making upgraded application code available to other computers via the Web serving software." The two parts of the data store represent two primary storage sections.); and

a plurality [two or more] of secondary nodes [client computer], each secondary node of said plurality of secondary nodes configured with a plurality of configuration settings having a first format, and each secondary node of said plurality of secondary nodes including a secondary storage area [local storage] (See page 2, paragraph [0015] "...two or more computers, such as a server and a client computer are connected over a network..." and see page 2, paragraph [0017] "The client computer 120 is a computing system configured to execute locally-running applications as well as connect to other computers over the network 105. The client computer 120 also includes local storage in the form of a client data store 106." Because two or more is disclosed here, it is clear that a plurality of secondary nodes could be attached to the primary.),

convey said plurality of configuration settings having said second format from said second primary storage section to each said secondary storage area of said plurality of secondary nodes (See page 4, paragraph [0031] "The files downloaded are stored in a separate location from the existing version of the application." These files are in the second format as in the claim.); and wherein each said secondary node of said plurality of secondary nodes is operable to:

receive said plurality of configuration settings [new version] having said second format (See page 4, paragraph [0031] "As illustrated in FIG. 3, the new version of the application (i.e., App Ver 1.0.0.1 320) is stored in a folder separate from the existing version of the application."); and

reconfigure in accordance with said plurality of configuration settings having said second format (See page 4, paragraph [0031] "Thus, when the application is launched again, the application starter 107 will execute the new version of the application rather than the old version.")

**Cool** fails to disclose said primary node is operable to: read said plurality of configuration settings having said first format from a first primary storage section of said at least two primary storage sections; transform said plurality of configuration settings having said first format to a plurality of configuration settings having a second format; and write said plurality of configuration settings having said second format to a second primary storage section of said at least two primary storage sections.

However, **White** discloses said primary node is operable to: read said plurality of configuration settings [data document] having said first format from a first primary storage section of said at least two primary storage sections (See page 6, paragraph [0066] "...when an initial request for a customized document [is] received, the document manager reads a data document from database 422..." The configuration settings are stored in the data document in XML format as disclosed in **White**);

transform said plurality of configuration settings having said first format [raw data document] to a plurality of configuration settings having a second format [customized subscription] (See page 6, paragraph [0066] "The transform is applied to the raw data document so as to generate the customized subscription, organization or presentation level document..."); and

write said plurality of configuration settings having said second format to a second primary storage section of said at least two primary storage sections (See **White** page 6, paragraph [0066] "See page 6, paragraph [0066] "...and the requested document is written to cache 44." The cache is considered a second storage section because it is separate from the section that holds the original configuration files.)

It would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of **Cool** with that of **White** because they deal with version upgrading of data, and by including the document version generation as disclosed in **White** with the automatic propagation as disclosed in **Cool**, the revised version can more efficiently be generated. It is for this reason that one of ordinary skill in the art would have been motivated to include said primary node is operable to: read said plurality of configuration settings having said first format from a first primary storage section of said at least two primary storage sections; transform said plurality of configuration settings having said first format to a plurality of configuration settings having a second format; and write said plurality of configuration settings having said second format to a second primary storage section of said at least two primary storage sections.

Office Action dated September 20, 2006, pages 3-6.

Claim 1 of the present application is as follows:

1. An apparatus for maintaining compatibility between nodes within a distributed systems management environment, comprising:
  - a primary node, said primary node including a primary storage area, said primary storage area including at least two primary storage sections; and
  - a plurality of secondary nodes, each secondary node of said plurality of secondary nodes configured with a plurality of configuration settings having a first format, and each secondary node of said plurality of secondary nodes including a secondary storage area, wherein said primary node is operable to:
    - read said plurality of configuration settings having said first format from a first primary storage section of said at least two primary storage sections;
    - transform said plurality of configuration settings having said first format to a plurality of configuration settings having a second format;
    - write said plurality of configuration settings having said second format to a second primary storage section of said at least two primary storage sections; and
    - convey said plurality of configuration settings having said second format from said second primary storage section to each said secondary storage area of said plurality of secondary nodes; and wherein each said secondary node of said plurality of secondary nodes is operable to:
      - receive said plurality of configuration settings having said second format; and
      - reconfigure in accordance with said plurality of configuration settings having said second format.

A fundamental notion of patent law is the concept that invention lies in the new combination of old elements. Therefore, a rule that every invention could be rejected as obvious by merely locating each element of the invention in the prior art and combining the references to formulate an obviousness rejection is inconsistent with the very nature of "invention." Consequently, a rule exists that a combination of references made to establish a *prima facie* case of obviousness must be supported by some teaching, suggestion, or incentive contained in the prior art which would have led one of ordinary skill in the art to make the claimed invention.

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780

(Fed. Cir. 1992). The requirements for establishing a *prima facie* case of obviousness in view of a combination of references are set forth in detail in Section 2142 of the MPEP and include the requirements that the Examiner explain in detail why the combination of the teachings is proper, that the Examiner provide a clear and convincing line of reasoning as to why an artisan would have found the claimed invention obvious in light of the teachings of the references, and that the Examiner provide a showing that it is the prior art and not the Applicants' own disclosure that teaches the combination asserted by the Examiner.

Applicants respectfully submit that the Examiner has not fulfilled the burden of establishing a *prima facie* case of obviousness in rejecting the claims as being unpatentable over Cool in view of White, and that the claims patentably distinguish over the references in their present form.

In rejecting the claims, the Examiner acknowledges, and Applicants agree, that Cool fails to disclose any of wherein a primary node is operable to “read said plurality of configuration settings having said first format from a first primary storage section of said at least two primary storage sections”, “transform said plurality of configuration settings having said first format to a plurality of configuration settings having a second format” and “write said plurality of configuration settings having said second format to a second primary storage section of said at least two primary storage sections”. The Examiner, however, cites White as disclosing these features.

White is directed to a mechanism for generating customized versions of data documents. The procedure for doing so is described in paragraph [0066] referred to by the Examiner and reproduced below:

**[0066]** FIG. 4 is a graphical representation of a data document generator that is effective to generate, maintain store, and distribute customized data documents in the manner described above. As may be seen in FIG. 4, the data document generator includes a document manager 41 that includes both a document table 413 and a transform table 414. Document table 413 contains rows of document records, 413a, . . . , 413n, such as those illustrated and described above, that identify and are used to read raw data documents from the raw data document database 42. Similarly, transform table 414 contains rows of transform records, 414a, . . . , 414n, that identify and are used to read transforms from transform database 43. Document manager 411 accesses database 42 through a software interface 411 and accesses transform database 43 through a software interface 412. Customized data documents, when generated in accordance with the operations described above, are written by document manager 41, through a software interface, to cache 44. As has been described above, when an initial request for a customized document received, the document manager reads a data document from database 42, and calls the appropriate transform from database 43. The transform is applied to the raw data document so as to generate the customized subscription, organization or presentation level document, and the requested document is written to cache 44.

The primary reference of Cool is directed to automatically upgrading a software application. White, on the other hand, discloses a mechanism for creating a customized version of a data document from raw data. Thus, the references have very different objectives and operate in significantly different ways to achieve those objectives. For example, White is not related to, does not discuss, and would have no reason to transform configuration settings from a first format to a second format at a primary node and then convey the plurality of configuration settings having the second format from a second primary storage section of the primary node to a secondary storage area of each of a plurality of secondary nodes. Doing so would not have any pertinence to creating a customized version of a data document.

In general, there is absolutely no disclosure or suggestion in either Cool or White which would suggest combining the references as proposed by the Examiner to one skilled in the art. The Examiner's assertions that both references deal with version upgrading of data (which is not a precisely accurate statement), and that "by including the document version generation as disclosed in **White** with the automatic propagation as disclosed in **Cool**, the revised version can [be] more efficiently generated" does not constitute a clear and convincing line of reasoning as to why an artisan would have found the claimed invention obvious in light of the teachings of the references as is required to establish a *prima facie* case of obviousness.

In point of fact, the only suggestion for combining the references as proposed by the Examiner is contained in Applicants' own disclosure, and Applicants respectfully submit that the Examiner is using hindsight based on Applicants' disclosure in choosing and combining disparate subject matter from each reference in an effort to achieve the present invention.

Therefore, the Examiner has not fulfilled the burden of establishing a *prima facie* case of obviousness in rejecting the claims as being obvious over Cool in view of White, and claim 1 patentably distinguishes over the references in its present form.

Claims 4, 7 and 9 depend from and further restrict claim 1 and are also not obvious over Cool in view of White, at least by virtue of their dependency. Independent claims 12 and 20 recite similar subject matter as claim 1 and patentably distinguish over the cited references for similar reasons as discussed above with respect to claim 1. Claims 15, 18 and 19 are also allowable in their present form, at least by virtue of their dependency from claim 12.

Therefore, the rejection of claims 1, 4, 7, 9, 12, 15 and 18-20 under 35 U.S.C. § 103(a) has been overcome.

**III. 35 U.S.C. § 103, Obviousness (claims 2 and 5)**

The Examiner has rejected claims 2 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Cool in view of White as applied to claim 1 above, and further in view of Greene et al., U.S. Patent Publication. No. 2002/0198734 (hereinafter "Greene"). This rejection is respectfully traversed.

The Examiner states:

Regarding claim 2, Cool and White teach an apparatus substantially as claimed. Cool and White fail to teach said primary node comprises a master node [master copy], and said plurality of secondary nodes comprises a plurality of slave nodes [client]. However Greene teaches said primary node comprises a master node, and said plurality of secondary nodes comprises a plurality of slave nodes. (See page 40, paragraph [0352] "The optimistic concurrency approach in FIG. 25, on the other hand, depicts the client using a read/write copy that must stay in sync with a master copy in order for updates to be accepted." In Greene, the master node is where the master copy is located and each of the clients represents a slave node.) It would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Cool and White with that of Greene because Green also deals with distributed systems and maintaining compatibility among them, and by including the master and slave concept of Greene, the hierarchy of data transfer among systems becomes better defined. It is for this reason that one of ordinary skill in the art would have been motivated to include said primary node comprises a master node [master copy], and said plurality of secondary nodes comprises a plurality of slave nodes [client].

Office Action dated September 19, 2006, pages 14-15.

Claims 2 and 5 depend from and further restrict claim 1. Greene does not supply the deficiencies in the principal references as described above. Claims 2 and 5, accordingly, are not obvious over Cool in view of White and Greene, at least by virtue of their dependency.

Therefore, the rejection of claims 2 and 5 under 35 U.S.C. § 103(a) has been overcome.

**IV. 35 U.S.C. § 103, Obviousness (claim 3)**

The Examiner has rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Cool in view of White as applied to claim 1 above, and further in view of Warrington, U.S. Patent Publication No. 2002/0083097. This rejection is respectfully traversed.

Warrington is cited as disclosing a distributed systems management environment comprising a WebSphere environment. Claim 3, however, depends from and further restricts claim 1. Warrington does not supply the deficiencies in the principal references as described above, and claim 3 is allowable in its present form, at least by virtue of its dependency.

Therefore, the rejection of claim 3 under 35 U.S.C. § 103(a) has been overcome.

**V. 35 U.S.C. § 103, Obviousness (claims 6 and 11)**

The Examiner has rejected claims 6 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Cool in view of White as applied to claim 1 above, and further in view of Parikh, U.S. Patent Publication No. 2004/0205162. This rejection is respectfully traversed.

Parikh is cited as disclosing a first format comprising a WebSphere version 5.x format, and a second format comprising a WebSphere 6.x format. Claims 6 and 11, however, depend from and further restrict claim 1. Parikh does not supply the deficiencies in the principal references as discussed above, and claims 6 and 11 are allowable in their present form, at least by virtue of their dependency.

Therefore, the rejection of claims 6 and 11 under 35 U.S.C. § 103(a) has been overcome.

**VI. 35 U.S.C. § 103, Obviousness (claim 8)**

The Examiner has rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Cool in view of White as applied to claim 1 above, and further in view of Teloh et al., U.S. Patent Publication No. 2003/0028521 (hereinafter "Teloh"). This rejection is respectfully traversed.

Teloh is cited as teaching that a primary node and a plurality of secondary nodes comprise a plurality of data processing units. Claim 8, however, depends from and further restricts claim 1. Teloh does not supply the deficiencies in the principal references as described above, and claim 8 is allowable in its present form, at least by virtue of its dependency.

Therefore, the rejection of claim 8 under 35 U.S.C. § 103(a) has been overcome.

**VII. 35 U.S.C. § 103, Obviousness (claim 10)**

The Examiner has rejected claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Cool in view of White as applied to claim 1 above, and further in view of Frazer et al., U.S. Patent Publication No. 2005/0055595 (hereinafter "Frazer"). This rejection is respectfully traversed.

Frazer is cited as disclosing primary and secondary nodes comprising a "cell". Claim 10, however, depends from and further restricts claim 1. Frazer does not supply the deficiencies in the principal references as described above, and claim 10 patentably distinguishes over the cited art, at least by virtue of its dependency.

Therefore, the rejection of claim 10 under 35 U.S.C. § 103(a) has been overcome.

**VIII. 35 U.S.C. § 103, Obviousness (claims 13 and 16)**

The Examiner has rejected claims 13 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Cool in view of White as applied to claim 12 above, and further in view of Greene. This rejection is respectfully traversed.



Greene is cited as teaching a primary node comprising a master node and a plurality of secondary nodes comprising a plurality of slave nodes and also as disclosing a synching out operation. Claims 13 and 16, however, depend from and further restrict claim 12. Greene does not supply the deficiencies in the principal references as described above, and claims 13 and 16 are allowable over the cited art, at least by virtue of their dependency.

Therefore, the rejection of claims 13 and 16 under 35 U.S.C. § 103(a) has been overcome.

**IX. 35 U.S.C. § 103, Obviousness (claim 14)**

The Examiner has rejected claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Cool in view of White as applied to claim 12 above, and further in view of Warrington. This rejection is respectfully traversed.

Warrington is cited as teaching a distributed systems management environment comprising a WebSphere environment. Claim 14, however, depends from and further restricts claim 12. Warrington does not supply the deficiencies in the principal references as described above, and claim 14 is allowable over the cited art, at least by virtue of its dependency.

Therefore, the rejection of claim 14 under 35 U.S.C. § 103(a) has been overcome.

**X. 35 U.S.C. § 103, Obviousness (claim 17)**

The Examiner has rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Cool in view of White as applied to claim 12 above, and further in view of Parikh. This rejection is respectfully traversed.

Parikh is cited as teaching a first format comprising a WebSphere version 5.x format, and a second format comprising a WebSphere 6.x format. Claim 17, however, depends from and further restricts claim 12. Parikh does not supply the deficiencies in the principal references as described above, and claim 17 is allowable over the cited art, at least by virtue of its dependency.

Therefore, the rejection of claim 17 under 35 U.S.C. § 103(a) has been overcome.

**XI. Conclusion**

For at least all the above reasons, claims 1-20 patentably distinguish over the cited art, and this application is believed to be in condition for allowance. It is, accordingly, respectfully requested that the Examiner so find and issue a Notice of Allowance in due course.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: December 20, 2006

Respectfully submitted,

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